

## EXHIBIT B-3

NO. 416-3011-07

GARY KING and LISA KING,  
Plaintiffs

§

IN THE DISTRICT COURT

V.

§

OF COLLIN COUNTY, TEXAS

OCWEN LOAN SERVICING, LLC, AS  
 SUCCESSOR BY MERGER WITH  
 OCWEN FEDERAL BANK, FSB,  
 WACHOVIA BANK, N.A., F/K/A/ FIRST  
 UNION NATIONAL BANK, AS TRUSTEE  
 FOR AMERICAN RESIDENTIAL EAGLE  
 CERTIFICATE TRUST 1998-1, UNKNOWN  
 HOLDERS AND/OR OWNERS OF RESIDUAL  
 INTEREST IN SECURITIZATION OF THE  
 AMERICAN RESIDENTIAL EAGLE  
 CERTIFICATE TRUST 1998-1,  
 RUSSELL STOCKMAN, SUBSTITUTE  
 TRUSTEE, and BAXTER & SCHWARTZ, P.C.,  
 Defendants

§

416<sup>TH</sup> JUDICIAL DISTRICT

**DEFENDANTS RUSSELL STOCKMAN, CHRISTOPHER K. BAXTER, AND  
 BAXTER & SCHWARTZ, P.C.'s SPECIAL EXCEPTIONS AND ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

RUSSELL STOCKMAN, CHRISTOPHER K. BAXTER and BAXTER &  
 SCHWARTZ, P.C., Defendants, file this Original Answer to Plaintiff's Original Petition  
 and by way of answer show:

**Special Exceptions**

1. Defendants especially except to paragraphs 17, 18, 21 and 22 of Plaintiff's  
 Original Petition because Plaintiff has not given fair notice to the Defendants as to how  
 the

Defendants committed a wrongful foreclosure, and did not state a specific time period  
 as to when the so called alleged breach occurred.

2. Defendants further except to paragraphs 23, 24, 43 and 45, for the reason  
 that said pleadings refer only to Defendants and not any one specific Defendant,  
 therefore Defendants are not given fair notice as to what conduct they allegedly

committed, therefore cannot properly prepare an adequate response.

#### **Statute of Limitations**

3. Defendants further plead the two and four year Statutes of Limitation as contained in Chapter 16 of Civil Practice and Remedies Code.

#### **Verified Denial**

4. Defendants are not liable in the capacity of which they are sued. Pursuant to 51.007 of the Texas Property Code, Defendants assert that they are not a necessary party and that it is Defendants' belief that it was named as a party solely in its capacity as a Trustee under a Deed of Trust.

#### **General Denial**

5. Defendants generally deny the allegations in Plaintiff's Original Petition and Request for Disclosure and demand strict proof thereof, as required by the Texas Rules of Civil Procedure.

#### **Affirmative Defenses**

6. Defendants make the following affirmative defenses with respect to the allegations of Plaintiff's Original Petition because claims pursuant to Rule 94 of the Texas Rules of Civil Procedure:

- a. Mistake of Fact;
- b. Estoppel;
- c. Two and four year Statutes of Limitation; and
- d. Waiver.

#### **Reservation of Rights**

7. Defendants reserve the right to further plead any and all defenses, affirmative or otherwise; and all other counterclaims to which Defendants may be entitled by this pleading or any amendment to this pleading.

#### **Attorney's Fees**

8. It was necessary for Defendants to obtain the services of SCHWARTZ & KALINOWSKI, L.L.P., a licensed attorney, to prepare and defend this suit. Judgment for attorney's fees and expenses through final judgment after appeal should be granted against Plaintiff and in favor of Defendants' attorney; or, in the alternative, Defendants

request that reasonable attorney's fees and expenses through final judgment and appeal be taxed as costs and be ordered paid directly to Defendants' attorney, who may enforce the order for fees in the attorney's own name.

**Request for Disclosure**

9. Plaintiff is requested to disclose within thirty (30) days of this request the information or material described in Texas Rules of Civil Procedure 194.2(a) through (i).

**Prayer**

10. For these reasons, Defendants ask the Court to sustain Defendants' Special Exceptions and Defendants further ask the Court to enter judgment that Plaintiff take nothing, dismiss Plaintiff's suit with prejudice, assess costs against Plaintiff, and award Defendants attorney's fees, expenses and costs, and for all other relief to which it is entitled.

Respectfully submitted,

SCHWARTZ & KALINOWSKI, L.L.P.  
1821 Mons Avenue  
Rosenberg, Texas 77471  
PHONE: (281) 342-2806  
FAX: (281) 342-2807

BY: 

DON T. SCHWARTZ  
State Bar No.: 17862000

Attorney for Defendants, RUSSELL  
STOCKMAN, CHRISTOPHER K.  
BAXTER and BAXTER & SCHWARTZ,  
P.C.

OCT-18-2007 14:07 From:

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To: 903 596 9005

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**CERTIFICATE OF SERVICE**

I certify that on October 18, 2007, in accordance with the provisions of Rule 21a, Texas Rules of Civil Procedure, I did serve a true copy of the foregoing instrument upon all attorneys of record in this cause.

  
Don T. Schwartz

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§ 416<sup>TH</sup> JUDICIAL DISTRICT

Defendants

## AFFIDAVIT

STATE OF TEXAS §

COUNTY OF FORT BEND §

**BEFORE ME**, the undersigned Notary Public, on this day personally appeared  
 KIRK A. SCHWARTZ, who being by me duly sworn, deposed as follows:

"My name is KIRK A. SCHWARTZ and I am a licensed attorney in the State of  
 Texas and am in good standing with the State Bar of Texas. I am of sound mind, lawful  
 age and have never been convicted of a felony or a crime of moral turpitude, am  
 capable of making of this Affidavit and am personally acquainted with the facts herein  
 stated:

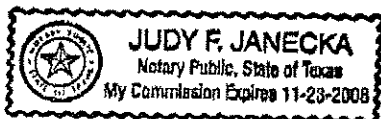
1. "I am the Vice-President of BAXTER & SCHWARTZ, P.C., and as Vice-  
 President, I have day to day knowledge of the operations of said professional  
 corporation.

2. "The factual matters contained in Defendants' Special Exceptions and Original Answer are true and correct."

EXECUTED this the 16 day of October, 2007.

  
KIRK A. SCHWARTZ

SWORN TO and SUBSCRIBED before me, the undersigned authority, on this the 16 day of October, 2007, by KIRK A. SCHWARTZ.



  
NOTARY PUBLIC STATE OF TEXAS